THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION Nos.18067 OF 1999 AND 171 OF 2000

DATED 16th NOVEMBER, 2006

BETWEEN:

Sri Ramadugu Shankaraiah and others

… Petitioners

AND

The Government of Andhra Pradesh, rep.by its Secretary, Department of Revenue, Secretariat, Hyderabad and others.

… Respondents

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION Nos.18067 OF 1999 AND 171 OF 2000

COMMON ORDER:

Land admeasuring Ac.2.05 guntas in survey Nos.685/2 situated at Gumlapur village o f Choppadandi Mandal in Karimnagar District was assigned to one Kolapuri Pochaiah (hereafter called, original assignee) in 1961, by Tahsildar, Karimnagar. The same was also implemented in supplementary sethwar. It appears though he was allegedly in possession and cultivating the land, ignoring the same, the land was again re-assigned to one Ramadugu Shankaraiah (hereafter called, subsequent assignee) in 1984, who dispossessed the original assignee and occupied the land. The original assignee gave a complaint to Mandal Revenue Officer (MRO), Choppadandi, who conducted enquiry and submitted a report that the Revenue Divisional Officer (RDO), Karimnagar, who recommended to the Joint Collector to cancel the assignment in favour of original assignee. By order, dated 22.04.1995, the Joint Collector cancelled the assignment on an allegation that original assignee sold away the land. It appears, on the ground that subsequent assignee is financially sound and not eligible for assignment of Government land, subsequent assignment was also cancelled.

Aggrieved by order of the Joint Collector, subsequent assignee filed revision petition before the Chief Commissioner of Land Administration (CCLA). In the said revision, original assignee was shown as fourth respondent. By order, dated 09.07.1999, CCLA affirmed the order of the Joint Collector in cancelling both the assignments. Aggrieved by the same, the subsequent assignee field W.P.No.18067 of 1999 and the original assignee filed W.P.No.171 of 2000.

The MRO has filed two separate counter affidavits in both the writ petitions. A combined reading of these two would reveal the following position taken by the official respondents. The assignment of land in 1961 to the original assignee is admitted. However, he was not in possession of the same and the land was treated as Kharij Khata. The assignment was also not implemented in the supplementary sethwar. Based on these entries, the land was re-assigned to subsequent assignee under mistaken impression, which is not valid. Therefore, enquiry was conducted which was attended by both the assignees. Based on the report of the RDO, the Joint Collector cancelled the assignments after giving opportunity to both assignees. It is alleged that subsequent assignee is not eligible for assignment. The reason given is that subsequent assignee owns wet land admeasuring Ac.3.13 guntas i.e., Ac.1.34 guntas in survey No.940 and Ac.1.23 guntas in survey No.942 (Ac.7.00 guntas comprised in survey No.942, if converted into dry land). His father also owns Ac.0.06 guntas of land and he has a share in the joint family property and therefore, he is not eligible. The original assignee filed counter affidavit in the writ petition filed by the subsequent assignee and vice versa. It is not necessary to refer to these counters.

Learned counsel for the petitioner in W.P.No.171 of 2000 submits that the allegation that the original assignee sold the land is incorrect. He points out that when the MRO sent a report, the reason for cancellation was that the original assignment was not implemented in the revenue records and that under a mistaken impression it is re-assigned. However, without giving notice, the RDO sent recommendation alleging contravention of Loani Rules, 1958, which is the basis for the Joint Collector to pass orders without giving an adequate opportunity to the original assignee to meet the allegation that he contravened the provisions of Section 3(2) of A.P.Assigned Lands (Prohibition of Transfers) Act, 1977 (the Act, for brevity). Nextly, he contends that the CCLA also observed that the re-assignment of land without cancelling the original assignment is not proper but in spite of the same, without application of mind, the order of the Joint Collector was affirmed, which is liable to be set aside.

Learned counsel for petitioner in W.P.No.18067 of 1999 submits that his client is a landless poor person eligible for assignment, and

therefore, the MRO assigned land in 1984. If the land assigned was already given to the petitioner in W.P.No.171 of 2000, the subsequent assignee cannot be denied the benefit of assignment.

Learned Assistant Government Pleader submits that the Joint Collector gave notice to both the assignees and after conducting enquiry found that both the assignees were not in possession of the land and that there was contravention of provisions of the Act. He, however, does not dispute that the finding of the Joint Collector on this aspect was not agreed to by the CCLA – revisional authority.

This Court has perused the order passed by the Joint Collector and CCLA. A reading of these two would show that the original assignee was not given an opportunity to meet the allegation that he sold away the land assigned to him. It is rather surprising that the Joint Collector came to conclusion that both the assignees were not in possession of the land without any material before him except the reports of the RDO dated 13.10.1994 and 03.02.1995 which are referred to in the reference entry of the proceedings of the Joint Collector. Therefore, learned counsel for the petitioner appearing for the original assignee is correct on this submission. There is no gainsaying that benefit given to a person in 1961 cannot be withdrawn without giving an adequate opportunity to such person to meet all the allegations. One should not forget that the entire enquiry was initiated only on the complaint given by the original assignee that the land is re-assigned to subsequent assignee without cancelling the assignment made to him. The Joint Collector as well as CCLA record that the subsequent assignment without cancelling earlier assignment is illegal and improper. The CCLA in the order, dated 09.07.1997, observed as under.

> I have examined the records and considered the arguments of the learned counsels carefully. The land was originally assigned to respondent No.4 in the early 60s. The Joint Collector's order reads that he appeared to have sold or land. The details about this alleged sale as to whom he has sold or when the sale took place are not mentioned. The fact remains however that the land is reassigned without canceling the earlier assignment made in favour of R4. The stand of the RP that he is in possession of the land and assignment made to him without following the procedure has no bearing etc., is not acceptable. A land assigned to someone else previously cannot be reassigned to a different person without canceling the earlier assignment after following the due procedure. This is what happened in this case. Hence, I uphold the JCs order is so far as this cancellation is concerned.
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> Coming to the respondent No.4, the R.D.Os report reveals that the land is not in possession of anybody and on the basis of this report the Joint Collector held that the original assignee violated conditions and cancelled that assignment also. It is the case of the R4 that RP forcibly occupied the land

> and threw him out and he has been agitating about this before the Revenue authorities. The Revenue records do not indicate the possession of R4 at any point of time, nor could he produce any documents to establish that he has ever cultivated this land at any time after assignment was ordered in his favour in the early sixties. Hence, I concur with JC's order that he too violated the conditions of assignment and uphold his orders pertaining to cancellation of original assignment ordered in favour of the fourth respondent also. In conclusion the RP is dismissed.

Insofar as the first paragraph as above is concerned, when there is a finding that assignment in favour of the petitioner in W.P.No.18067 of 1999 was illegal, it would have been more reasonable to remand the matter for fresh enquiry to the MRO. Be that as it is, secondly, on the issue discussed in para 2 above, except referring to the RDOs report to the effect that none of the two assignees is in possession of the land, it appears no proper enquiry was conducted into this. In this background, this Court is of considered opinion that a detailed enquiry is necessary before cancelling assignment made to the petitioner in W.P.No.171 of 2000. Insofar as the petitioner in W.P.No.18067 of 1999 (subsequent assignee) is concerned, the MRO in counter affidavit alleged as under.

> It is further submitted that the assignment was made without conduct of enquiry about the eligibility of the petitioner. In this connection it is pertinent to mention that the petitioner herein own an extent of Ac.1.34 gts wet in Sy.No.940 and Ac.1.23 gts wet in Sy.No.942 if it is converted it comes to 7 acres and odd dry land. Added to this the petitioner father owns Ac.0.06 cts of land and is a member of Hindu Joint Family. His father passed away and he is cultivating the same. Therefore, the petitioner is not entitled for any further assignment. The assignment made was irregular under mistaken impression.

The subsequent assignee has not filed any reply affidavit denying the same. The averment made in the counter affidavit stands proved and therefore, there is no strong reason to differ with the view of the respondents that the subsequent assignee is not eligible as he is not landless and poor person. This Court, however, hastens to add that a further enquiry has to be conducted into this and if the subsequent assignee is eligible, his claim may be considered for assignment of some other suitable land.

In the result, W.P.No.171 of 2000 is disposed of setting aside the order of CCLA insofar as the original assignee is concerned and the matter is remitted to MRO, Choppadandi, to conduct enquiry after giving notice to the original assignee Kolapuri Pochaiah, son of Rajaiah, Resident of Gumlapur village, and pass necessary orders within a period of eight weeks from the date of receipt of copy of this order. Insofar as

W.P.No.18067 of 1999 is concerned, this Court does not find any infirmity in the order passed by CCLA as admittedly the assignment was made to subsequent assignee without cancelling the earlier assignment.

The W.P.No.18067 of 1999 is accordingly dismissed with observations as above and the W.P.No.171 of 2000 is accordingly disposed of. No costs.

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(V.V.S.RAO, J)

16.11.2006
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